

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Skowron-Muco	Team: Team # 2	CCRB Case #: 200913886	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/06/2009 10:30 PM	Location of Incident: near the intersection of Mermaid Avenue and West 32nd Street	Precinct: 60	18 Mo. SOL 3/6/2011	EO SOL 3/6/2011	
Date/Time CV Reported Tue, 09/08/2009 2:28 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/08/2009 2:28 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joshua Konen	00966	936882	PSA 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Heriberto Hernandez	18007	932167	PSA 1

Officer(s)	Allegation	Investigator Recommendation
A.POM Joshua Konen	Discourtesy: PO Joshua Konen spoke obscenely and/or rudely to § 87(2)(b)	
B.POM Joshua Konen	Abuse: PO Joshua Konen searched § 87(2)(b)	

Case Summary

§ 87(2)(b) contacted the CCRB on September 8, 2009 via phone and filed the following complaint (encl. 4-4a). On September 18, 2009, at approximately 10:30p.m., § 87(2)(b) was approached by officers on West 32nd Street and Mermaid Avenue in Brooklyn and summonsed for riding his bicycle on the sidewalk. The following allegations resulted from the officers' actions:

- **Allegation A: Discourtesy: PO Joshua Konen spoke obscenely and/or rudely to** § 87(2)(b)
- **Allegation B: PO Joshua Konen searched** § 87(2)(b)

§ 87(2)(g)

Mediation was offered to § 87(2)(b) and he rejected it.

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on September 18, 2009 (encl. 5-5c). On September 6, 2009 at approximately 10:30p.m., § 87(2)(b) rode his bicycle on West 32nd Street in Brooklyn, which is a dead end street. § 87(2)(b) rode his bicycle in the street in the direction of Mermaid Avenue where he observed an unmarked black van parked on the corner of West 32nd Street across Mermaid Avenue. The front of the van was facing § 87(2)(b)

§ 87(2)(b) rode up to a store on the corner of West 32nd Street and Mermaid Avenue, got off his bicycle and purchased a drink at a grocery store for a resident at his place of employment. § 87(2)(b) pushed his bicycle into the store and he never rode his bicycle on the sidewalk adjacent to the store. § 87(2)(b) exited the store and observed that the van had traveled across Mermaid Avenue and parked alongside the store. PO 1, a uniformed, white male, with dark hair, 5'8" tall, 190 pounds, and identified via investigation as PO Heriberto Hernandez, called for § 87(2)(b) to come over. § 87(2)(b) questioned why and then turned around and faced away from the officers because he did not feel comfortable walking towards them. He also feared being on a dead end block with the officers. PO 2, the driver, who was in uniform, approximately 6'2" tall, with sandy brown hair and 210 pounds, stated, "Get the fuck over here" but § 87(2)(b) was not compliant. This officer was identified via investigation as PO Joshua Konen.

The unmarked van backed up onto Mermaid Avenue and in front of the store. § 87(2)(b) who held his bicycle, stopped wheeling the bicycle and stood in place when the officers spoke to him. § 87(2)(b) was not on the bicycle. There were approximately ten civilians present, who § 87(2)(b) only knows by face. The two officers, along with a third officer described as a Hispanic male, 6'3"-6'4" tall, 240 pounds, in uniform got out of the van and approached § 87(2)(b) PO

Hernandez asked if § 87(2)(b) had identification. § 87(2)(b) questioned why it needed to be provided and PO Konen responded, “Shut the fuck up. Do you got fucking ID?” § 87(2)(b) did not produce identification and PO 2 grabbed § 87(2)(b)’s shoulders and back, and pushed him up against the front of the van and took § 87(2)(b)’s wallet out of his back pant pocket and handed it to PO Hernandez. § 87(2)(b) did not sustain any injuries. Then, PO Konen took § 87(2)(b)’s keys out of his front pant pocket and placed it on the van. When § 87(2)(b) inquired about what he did wrong, PO Konen stated, “Shut the fuck up and look straight ahead.” § 87(2)(b) faced the front of the van with his hands against the van and asked if PO Konen is supposed to be professional but PO Konen stated, “Just shut the fuck up.” § 87(2)(b) turned around to look at PO Konen’s badge and PO Konen stated, “Yeah. Look real fucking good. Look at it good.” § 87(2)(b) observed PO Konen to have shield number 966. Then, § 87(2)(b) inquired again what he had done wrong and one of the officers answered that § 87(2)(b) rode his bicycle on the sidewalk and was two to three inches on the sidewalk. PO Konen stated to PO Hernandez, “Just give him a fucking ticket.” At that point, § 87(2)(b) informed the officers that they were the same officers whom had stopped his son, § 87(2)(b) and his friend, identified only as § 87(2)(b) near the building in which he and § 87(2)(b) reside. PO Konen stated that they had received, “a fucking call that somebody there was selling drugs.” § 87(2)(b) speculated that the officers were the officers who had stopped § 87(2)(b) and § 87(2)(b) because approximately thirty minutes before § 87(2)(b) had left his residence for work, § 87(2)(b) came home and stated that he and § 87(2)(b) had been stopped by three officers, who were in a black unmarked van, on the side of their residence. § 87(2)(b) and § 87(2)(b) were also searched.

Then, § 87(2)(b) told the officers to do what they had to do because he had to get to work. PO Konen asked, “Where the fuck you work?” and § 87(2)(b) stated that his place of employment did not have anything to do with the incident. § 87(2)(b) received a summons for riding a bicycle on the sidewalk and proceeded to go to work.

Attempts to Contact Civilians

A call was placed to § 87(2)(b) on November 23, 2009 and December 11, 2009. He was not at his residence and a message was left for him. On January 11, 2009, a letter was sent to § 87(2)(b). The letter was not returned to the CCRB. Given that a surname and contact information are not available for § 87(2)(b), successful attempts to contact him could not be made.

NYPD Statement(s):

Subject Officer: POLICE OFFICER JOSHUA KOHEN

- § 87(2)(b) white male, 5’11 inches tall, 215 pounds, with blue eyes and blonde hair.
- On September 6, 2010, PO Konen was on duty, in uniform, assigned to impact overtime and worked with PO Heriberto Hernandez. PO Konen and PO Hernandez were in an unmarked Ford van, which was either black or blue. The van was either # § 87(2)(b) or # § 87(2)(b). PO Konen was the driver.

CCRB Testimony

PO Konen was interviewed at the CCRB on March 11, 2010 (encl. 7-7a). On September 6, 2009 at approximately 10:30 p.m., PO Konen and PO Hernandez were on the corner of West 32nd Street and Mermaid Avenue in Brooklyn when they observed § 87(2)(b) ride his bicycle from the rear of 2940 West 31st Street on the sidewalk. After observing § 87(2)(b) for approximately 30

seconds, PO Konen and PO Hernandez drove the van up to § 87(2)(b) who was on the passenger side of the van, and PO Hernandez requested that § 87(2)(b) stop. PO Konen and PO Hernandez were the sole officers in the van. § 87(2)(b) was not compliant, acted irrationally, stated he was being harassed and demanded to know why he was stopped. PO Konen and PO Hernandez exited the vehicle. At that point, § 87(2)(b) stopped riding the bicycle. The stop took place near a store but § 87(2)(b) could not recall whether there were any civilians outside the store. Since § 87(2)(b) rummaged in his pockets, PO Konen instructed § 87(2)(b) to take his hands out of his pockets. PO Hernandez requested § 87(2)(b)'s identification. § 87(2)(b) complied. PO Hernandez ran a warrant check and during that time, § 87(2)(b) was verbally abusive towards the officers and refused to stay still. As a result, PO Konen verbally instructed § 87(2)(b) to take his hands out of his pockets and place his hands on the car. To the best of his recollection, PO Konen and PO Hernandez did not have any physical engagement with § 87(2)(b).

§ 87(2)(b) was not searched by the officers. PO Konen and PO Hernandez did not make use of any profanity. PO Konen did not recall whether § 87(2)(b) requested his name or shield number. PO Konen did not state, "Look real fucking good at it. Look at it good." PO Hernandez ultimately issued § 87(2)(b) a summons for riding his bicycle on the sidewalk. At that point, PO Konen and PO Hernandez got back into the van and drove away.

Subject Officer: POLICE OFFICER HERIBERTO HERNANDEZ

- § 87(2)(b) Hispanic male, 5'8 inches tall, 155 pounds, with brown hair and brown eyes.
- On September 6, 2009, PO Hernandez was on duty, in uniform, assigned to Impact overtime with PO Joshua Konen. PO Hernandez was the recorder.

Memo book:

At 10:30 p.m., one male stopped at the rear of 29-40 West 31st Street. Issued a "C" summons for bike on a sidewalk.

CCRB Testimony

PO Hernandez was interviewed at the CCRB on February 23, 2010 (encl. 6c-6d). His statement was consistent with PO Konen with the following exceptions noted. PO Konen pulled up to § 87(2)(b) in the van and through the window, the officers instructed § 87(2)(b) to stop. § 87(2)(b) was compliant. Once the officers exited the van and explained to § 87(2)(b) why he was stopped, § 87(2)(b) became upset. PO Hernandez could smell beer on § 87(2)(b) who was visibly intoxicated, was loud and cursed stating, "You are fucking harassing me." § 87(2)(b) fidgeted, paced back and forth and refused to comply with the officers' request for his identification. Given the high crime area, one of the officers frisked § 87(2)(b) for weapons in his waistband. § 87(2)(b) was not searched. The officers did not observe any bulges prior to the frisk. PO Hernandez could not recall whether he was the one who frisked § 87(2)(b) or if it was PO Konen. No weapons were recovered during the frisk. The frisk was the only physical interaction that § 87(2)(b) had with officers. § 87(2)(b) was not struck or pushed by any officer. PO Hernandez issued § 87(2)(b) a summons. Although § 87(2)(b) was loud and cursed, the situation was under control. The officers did not use any profanity against § 87(2)(b).

NYPD Document(s)

Sprint

A Sprint request yielded negative results (encl. 14).

Stop, Question and Frisk Log and Report

The stop and frisk report yielded negative results for § 87(2)(b) (encl. 13).

§ 87(2)(b), § 87(2)(a) 160.50

PSA 1 (801 command) Vehicle Utilization log and roll call

The roll call and vehicle utilization log document that PO Konen was on duty and assigned to Impact overtime on September 6, 2009 (encl. 8-9).

§ 87(2)(b), § 87(2)(a) 160.50

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of March 30, 2010 with regard to the incident (encl. 10).

Civilian(s) Criminal History

- Due to the commonality of his surname, a search was conducted dating back solely to January 1, 2007. As of March 29, 2010, Office of Court Administration records reveal no criminal convictions for § 87(2)(b)

§ 87(2)(b)

Subject Officer(s) CCRB History

- PO Konen has been a member of the service for 5 years and there is one substantiated CCRB allegations against him. Case number 200816537 was substantiated for a frisk. The board recommended charges. No NYPD disposition was available. (encl. 1).

Conclusion

Identification of Subject Officer(s)

- PO Konen and PO Hernandez acknowledged that they stopped § 87(2)(b) after they observed him ride a bicycle on the sidewalk. § 87(2)(b) observed PO Konen's shield number and alleged that PO Konen was the officer who used profanity and force against him.

Allegations not pleaded

- An allegation of stop was not pleaded because the allegation amounts to a summons dispute. PO Konen and PO Hernandez stated that they stopped § 87(2)(b) because they witnessed him riding his bicycle on the sidewalk and subsequently issued him a summons.
- Given that the force alleged was minimal, did not rise to the level of misconduct and was done incident to the issuance of a lawful summons, which was in lieu of an arrest, it was not pleaded.
- Statements verifying the earlier incident were not obtained from § 87(2)(b) and § 87(2)(b). Therefore, a stop and search allegation have not been pleaded in that this is hearsay information.

Investigative Findings and Recommendations

Allegation A: PO Joshua Konen spoke obscenely and/or rudely to § 87(2)(b)

Allegation B: PO Joshua Konen searched § 87(2)(b)

§ 87(2)(b) alleged that he was stopped, at which point, PO Konen used profanity against him, and removed items from his pockets. § 87(2)(b) alleged that there were three officers at the incident. PO Konen and PO Hernandez both maintained that they were the only two officers at the incident location. PO Konen maintained that he did not use profanity against § 87(2)(b) during the incident and he did not search § 87(2)(b). This was confirmed by PO Hernandez. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Team: _____

:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date